

West Virginia State 401 Water Quality Certification Conditions
for
U.S. Army Corps of Engineers Section 404 Nationwide Permits
2017 renewal

Draft for public comment

1. Aids to Navigation

(no state WQS special conditions)

2. Structures in Artificial Canals.

(no state WQS special conditions)

3. Maintenance.

Nationwide Permit 3 West Virginia 401 Water Quality Certification Special Conditions:

- A.** Prior written notification to the West Virginia Department of Environmental Protection, Division of Water and Waste Management (DEP DWWM) is required for use of this permit on streams identified in Section H Condition 18 A, B, and C herein, and for all Section 10 Rivers.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.

(no state WQS special conditions)

5. Scientific Measurement Devices.

Nationwide Permit 5 West Virginia 401 Water Quality Certification Special Conditions:

- A.** Measurement devices will not restrict stream flow. No structure authorized by this permit shall entrain or impinge fish or any other aquatic life; or impede or prevent fish movement upstream or downstream; or cause more than minimal impact without specific written authorization from DEP DWWM.

6. Survey Activities.

Nationwide Permit 6 West Virginia 401 Water Quality Certification Special Conditions:

- A.** All test holes which penetrate solid rock shall be abandoned so that the lateral and vertical movement of fluids is prevented, provided that the test hole need not be plugged if subsequent excavation will remove the full depth of the test hole.
- B.** Prior written notification to DEP DWWM is required for activities proposing exploratory trenching under this permit.

7. Outfall Structures and Associated Intake Structures.

Nationwide Permit 7 West Virginia 401 Water Quality Certification Special Conditions:

- A.** Individual State Water Quality Certification is required when outfall structures and associated intake structures are being constructed in any streams identified in Section H Condition 18 A, B, and C herein.
- B.** Pre-construction notification of an outfall structure shall be provided to the DEP DWWM allowing 45 days for a determination to be made as to whether the outfall will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification.
- C.** Disturbance of shoreline will be limited to 100 linear feet.
- D.** The structure is to be properly designed to prevent erosion. Rip rap or a splash pad is to be constructed to dissipate energy and to aerate the discharge unless the discharge elevation is below the water line at all times.
- E.** Along with the PCN required to be submitted to DEP DWWM (as specified in Section H Standard Condition 1), information must be provided allowing 45 days for a determination of whether the proposed water withdrawal will have more than minimal impacts on aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:
 - a)** the maximum water withdrawal rate
 - b)** designs to minimize impingement and entrainment of aquatic life, and
 - c)** a description of how the intake rate will affect streamflow, or be varied, during periods of seasonal low flow and/or drought.
- F.** No structure authorized by this permit shall impede or prevent fish movement upstream or downstream.

8. Oil and Gas Structures on the Outer Continental Shelf.

(no state WQS special conditions)

9. Structures in Fleeting and Anchorage Areas.

Nationwide Permit 9 West Virginia 401 Water Quality Certification Special Conditions:

- A. Compensatory mitigation is required by 47 CSR 5A 6.2.k. for barge fleeting areas.

10. Mooring Buoys.

(no state WQS special conditions)

11. Temporary Recreational Structures.

(no state WQS special conditions)

12. Utility Line Activities.

Nationwide Permit 12 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for
- i. Pipelines equal to or greater than 24 inches in diameter;
 - ii. Pipelines crossing a Section 10 river (unless the bore is greater than 100 feet below the stream bed);
 - iii. Pipelines transporting hazardous materials/substances as defined by the Toxic Substances Control Act (pipelines carrying refined natural gas are exempt from this condition);
 - iv. Utility lines within wetlands that would use or consider the use of herbicides for right-of-way maintenance;
 - v. Activities impacting greater than 200 linear feet of stream bank on any streams identified in Section H Condition 18 A, B, and C herein;
 - vi. Cumulative permanent impacts on perennial and intermittent streams totaling greater than 300 linear feet.
- B. Points of ingress and egress to streams for equipment shall be within the permitted area of disturbance.
- C. Individual stream crossings must be completed in a continuous, progressive manner and within 72 hours during seasonal normal or below normal stream flow conditions. Crossings on the Ohio, Kanawha, New, Monongahela and the Little Kanawha River, below the confluence with Hughes Rivers, are exempt from the 72-hour requirements.

All stream activities shall be completed as rapidly as possible.

- D.** Shoreline restoration will be completed and stabilized in accordance with Section H Standard Condition 5. Equipment tracking in wetlands will utilize protective mats when practical. Restoration of the disturbed areas will be completed within 72 hours of the completion of pipeline installation across the watercourse.
- E.** Surface disturbance will not extend beyond the right-of-way limits. Stream crossings will be conducted as close to a right angle to the watercourse as practical and the area of disturbance will be limited to reduce in stream activity.
- F.** Dredging for backfill material is not allowed.
- G.** Submarine pipeline stream crossings (including horizontal directional drilling) must be designed and constructed to prevent flotation and the possibility of leakage or rupture and the top of pipelines must be buried a minimum of three (3) feet below the stream bottom.
- H.** Horizontal Directional Drilling (HDD) for underwater crossings requires an Inadvertent Return Contingency Plan be submitted to DEP DWWM 30 days in advance of activity.
- I.** Where it is apparent that small boats, inner tubes, swimmers, etc. could be using the stream in the work area, easily seen warning signs must be placed a minimum of 50 feet upstream and downstream of the stream crossings construction site to advise stream users of the potential danger.
- J.** Pre-construction notification to DEP DWWM is required when this permit is being used for vented low water crossings.
- K.** Pre-construction notification to DEP DWWM is required when this permit is being used for water withdrawal, allowing 45 days for a determination of whether the water withdrawal will have more than minimal impacts on aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:
 - a)** the maximum water withdrawal rate
 - b)** designs to minimize impingement and entrainment of aquatic life, and
 - c)** a description of how the intake rate will affect streamflow, or be varied, during periods of seasonal low flow and/or drought.
- L.** No structure authorized by this permit shall impede or prevent fish movement upstream or downstream.

13. Bank Stabilization.

Nationwide Permit 13 West Virginia 401 Water Quality Certification Special Conditions:

- A.** Except for activities under Section 14 of the 1946 Flood Control Act, Individual State Water Quality Certification is required for bank stabilization activities:
 - i. Greater than 500 linear feet of perennial and intermittent stream bank authorized by the Corps of Engineers (this condition may be waived up to 1000 linear feet for landowners working with West Virginia Conservation Agency);
 - ii. Activities impacting greater than 200 linear feet on one or more of the streams identified in Section H Condition 18 A, B, and C herein.
- B.** Pre-construction notification shall be provided to the DEP DWWM allowing 45 days for a determination to be made as to whether the stabilization activity will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification.
- C.** Bank protection measures may not be extended into the bed of the stream except as necessary to provide proper footing of the bank stabilization measure.
- D.** Stabilized streambanks, where possible and practicable, should be sloped and revegetated for erosion control purposes.
- E.** The use of unconsolidated river gravel (river jack) for streambank stabilization is not allowed. Unconsolidated river material may be used to reconstruct streambanks or form bankfull benches provided they are stabilized by material and/or methods which prevent further erosion under normal or expected high flows. Acceptable material and/or methods are; quarried or shot rock, clean concrete rubble, gabions, cribbing, woody vegetation, and flow diversion structures such as rock vanes. All of the foregoing are to be used in combination with appropriate sloping and engineering specifications.

14. Linear Transportation Projects.

Nationwide Permit 14 West Virginia 401 Water Quality Certification Special Conditions:

- A.** Activities associated with temporary access fills, temporary cofferdams or other discharges related to accessing the stream for maintenance activities require the use of clean and coarse non-erodible materials with 15% or less of like fines that is properly sized to withstand expected high flows.
- B.** Pipe, box, and arched culvert crossings:
 - a.** The volume of fill for culverted structures is limited to the amount required to achieve transportation purpose.
 - b.** The inlet/outlets must be designed in such a manner as to maintain substrate in the bottom of the culvert (culverts installed in bedrock streams do not need to

be countersunk). Countersinking the culvert to the sub-pavement of the streambed, backwatering or the use of a bottomless culvert will generally fulfill this requirement.

- c. If fills associated with the crossing extend onto the floodplain the use of floodplain culverts is strongly encouraged.
- C. The volume of fill for a bridge abutment or piers below the ordinary high water mark is not to exceed 200 cubic yards for a single bridge project.
- D. Individual State Water Quality Certification is required for an activity impacting greater than 200 linear feet on one or more of the streams identified in Section H Condition 18 A, B, and C herein.

15. U.S. Coast Guard Approved Bridges.

Nationwide Permit 15 West Virginia 401 Water Quality Certification Special Conditions:

- A. Pre-construction notification shall be provided to the DEP DWWM for the use of this permit.

16. Return Water From Upland Contained Disposal Areas.

(no state WQS special conditions)

17. Hydropower Projects.

Nationwide Permit 17 West Virginia 401 Water Quality Certification Special Conditions:

- A. An Individual State Water Quality Certification is required for use of this permit.

18. Minor Discharges.

Nationwide Permit 18 West Virginia 401 Water Quality Certification Special Conditions:

- A. Pre-construction notification of dredging/filling shall be provided to the DEP DWWM allowing 45 days for a determination to be made as to whether the activity will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification.

19. Minor Dredging.

Nationwide Permit 19 West Virginia 401 Water Quality Certification Special Conditions:

- A. Pre-construction notification of dredging/filling shall be provided to the DEP DWWM allowing 45 days for a determination to be made as to whether the activity will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification.

20. Response Operations for Oil and Hazardous Substances.

Nationwide Permit 20 West Virginia 401 Water Quality Certification Special Conditions:

- A. Substances contained during cleanup or other contaminated dredged or fill material cannot be discharged or disposed of in sensitive areas such as islands, embayments, wetlands, or any water course, but only in disposal areas approved by DEP DWWM.

21. Surface Coal Mining Activities.

Nationwide Permit 21 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for activities impacting any classification of stream listed in West Virginia 401 Water Quality Certification Standard Condition No. 18.
- B. Individual State Water Quality Certification is required for activities impacting an intermittent or perennial stream(s).
- C. Individual State Water Quality Certification is required for intermittent or perennial stream, crossing (linear transportation projects) e.g. haul roads, access roads, conveyor belts, and pipelines, greater than 100 linear feet per each crossing.
- D. Individual State Water Quality Certification is required for wetland impacts greater than ½ acre.

22. Removal of Vessels.

(no state WQS special conditions)

23. Approved Categorical Exclusions.

Nationwide Permit 23 West Virginia 401 Water Quality Certification Special Conditions:

- A. An Individual State Water Quality Certification is required for use of this permit.

24. Indian Tribe or State Administered Section 404 Programs.

(no state WQS special conditions)

25. Structural Discharges.

(no state WQS special conditions)

26.

[Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

(no state WQS special conditions)

28. Modifications of Existing Marinas.

(no state WQS special conditions)

29. Residential Developments.

Nationwide Permit 29 West Virginia 401 Water Quality Certification Special Conditions:

- A. Projects affecting Section 10 waters and adjacent wetlands require individual state water quality certification.
- B. Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification.

30. Moist Soil Management for Wildlife.

(no state WQS special conditions)

31. Maintenance of Existing Flood Control Facilities.

Nationwide Permit 31 West Virginia 401 Water Quality Certification Special Conditions:

- A. In non-emergency situations, prior written notification is required from DEP DWWM

allowing 45 days ensure both the minimization of impacts to fisheries and wildlife habitat and the consideration of habitat enhancements.

32. Completed Enforcement Actions.

Nationwide Permit 32 West Virginia 401 Water Quality Certification Special Conditions:

- A. An Individual State Water Quality Certification is required for use of this permit.

33. Temporary Construction, Access, and Dewatering.

Nationwide Permit 33 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for use of this permit to construct temporary causeways in Section 10 waters, or for fills in any water anticipated to exceed one year.

34. Cranberry Production Activities

(no state WQS special conditions)

35. Maintenance Dredging of Existing Basins.

(no state WQS special conditions)

36. Boat Ramps.

Nationwide Permit 36 West Virginia 401 Water Quality Certification Special Conditions:

- A. Pre-construction notification for this permit shall be provided to the DEP DWWM allowing 45 days for a determination to be made as to whether the boat ramp will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification.

37. Emergency Watershed Protection and Rehabilitation.

Nationwide Permit 37 West Virginia 401 Water Quality Certification Special Conditions:

- A. Projects that have been coordinated with and obtained concurrence from WV DEP-in the early project planning phase are certified.
- B. This certification applies only to those emergency situations that involve: threats to life, threat of loss of primary residence, and loss or threat of loss to the areas

infrastructure and/or other community services.

38. Cleanup of Hazardous and Toxic Waste.

Nationwide Permit 38 West Virginia 401 Water Quality Certification Special Conditions:

- A. Along with the PCN required to be submitted to DEP DWWM (as specified in Section H State Condition 1), notice of the proposed activity must be provided to the West Virginia Department of Environmental Protection, Division of Land Restoration, Office of Environmental Remediation, 601 57th Street, Charleston, West Virginia 25304, as early as possible.

39. Commercial and Institutional Developments.

Nationwide Permit 39 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for projects impacting Section 10 waters and adjacent wetlands.
- B. Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification.

40. Agricultural Activities.

Nationwide Permit 40 West Virginia 401 Water Quality Certification Special Conditions:

- A. Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification.

41. Reshaping Existing Drainage Ditches.

(no state WQS special conditions)

42. Recreational Facilities.

(no state WQS special conditions)

43. Stormwater Management Facilities.

Nationwide Permit 43 West Virginia 401 Water Quality Certification Special Conditions:

- A. Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification.

44. Mining Activities.

(no state WQS special conditions)

45. Repair of Uplands Damaged by Discrete Events.

Nationwide Permit 45 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for an activity impacting greater than 200 linear feet on one or more of the streams identified in Section H Condition 18 A, B, and C herein.

46. Discharges in Ditches.

(no state WQS special conditions)

47. [Reserved]

48. Commercial Shellfish Aquaculture Activities.

Nationwide Permit 48 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for an activity impacting greater than 200 linear feet on one or more of the streams identified in Section H Condition 18 A, B, and C herein.

49. Coal Remining Activities.

Nationwide Permit 49 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for activities impacting any classification of stream listed in West Virginia 401 Water Quality Certification Standard Condition No. 18.

- B.** Individual State Water Quality Certification is required for activities impacting an intermittent or perennial stream(s).
- C.** Individual State Water Quality Certification is required for intermittent or perennial stream, crossing (linear transportation projects) e.g. haul roads, access roads, conveyor belts, etc., greater than 100 linear feet per each crossing.
- D.** Individual State Water Quality Certification is required for wetland impacts greater than ½ acre.

50. Underground Coal Mining Activities.

Nationwide Permit 50 West Virginia 401 Water Quality Certification Special Conditions:

- A.** Individual State Water Quality Certification is required for activities impacting any classification of stream listed in West Virginia 401 Water Quality Certification Standard Condition No. 18.
- B.** Individual State Water Quality Certification is required for activities impacting an intermittent or perennial stream (s).
- C.** Individual State Water Quality Certification is required for intermittent or perennial stream, crossing (linear transportation projects) e.g. haulroads, access roads, conveyor belts, etc., greater than 100 linear feet per each crossing.
- D.** Individual State Water Quality Certification is required for wetland impacts greater than ½ acre.

51. Land-Based Renewable Energy Generation Facilities.

Nationwide Permit 51 West Virginia 401 Water Quality Certification Special Conditions:

- 1.** Individual State Water Quality Certification is required for an activity impacting greater than 200 linear feet on one or more of the streams identified in Section H Condition 18 A, B, and C herein.

52. Water-Based Renewable Energy Generation Pilot Projects.

Revoked.

H. West Virginia State 401 Water Quality Certification Standard Conditions for Nationwide Permits

The following are West Virginia's Section 401 Water Quality Certification standard conditions that apply to the Nationwide Permits as published on January 6, 2017 the *Federal Register* (Vol 82 pg 1860), by the U.S. Army Corps of Engineers. These conditions must be implemented into any activity authorized by a U.S. Army Corps of Engineers Nationwide Permit(s). The State's certification of these Nationwide Permit activities does not replace the need for the applicant proposing an activity under the Nationwide Permit Program from obtaining other applicable permits/authorizations from the West Virginia Department of Environmental Protection and/or the West Virginia Division of Natural Resources (WV DNR). Each permittee shall, if they do not understand or are not aware of applicable Nationwide Permit conditions, contact the Corps of Engineers prior to conducting any activity authorized by a Nationwide Permit in order to be advised of applicable conditions. These 401 Water Quality Certifications, with all attendant standard conditions and special conditions, are applicable to Corps of Engineers Civil Works Projects in West Virginia.

1. Any permitted activity for which U.S. Army Corps of Engineers requires pre-construction notification (PCN) in accordance with NWP General Condition 32 requires pre-construction notification to be given to DEP DWWM, allowing 45 days for determination of whether activity will require Individual Water Quality Certification.
2. Proof of compensatory mitigation (as outlined in Standard Condition 19 below) is required to be submitted to DEP DWWM prior to construction for a project with permanent stream impacts greater than 300 linear feet or for discharges causing the loss of greater than 1/10 acre of wetlands.
3. Culverted crossings should be sized and installed in a manner that allow the passage of aquatic life and freely pass bankfull flows. E x c e p t i o n s to this requirement would be when culvert placement is in bedrock, when stream gradient is equal to or greater than 4%, or when bankfull elevation is greater than final surface elevation.
4. The permittee will investigate for the presence of water supply intakes or other activities within 1/2 mile downstream, which may be affected by suspended solids and turbidity increases caused by work in the watercourse. The permittee will give notice to operators of any such water supply intakes and such other water quality dependent activities as necessary before beginning work in the watercourse in sufficient time to allow preparation for any change in water quality.
5. Excavation, dredging or filling in the watercourse will be done only to the extent necessary to achieve the project's purpose, and at each wetland crossing the top 12 inches of topsoil shall be removed and stockpiled separately from other excavated material. In addition, at each stream crossing, substrate in the channel is to be removed and stockpiled separately from other excavated material. This native material must be re-used in restoration of the wetland and/or stream bed.
6. Spoil materials from the watercourse or onshore operations, including sludge deposits, will not be dumped in the watercourse, or deposited in wetlands or other areas where the deposit may adversely affect the surface or ground waters of the state.

7. The permittee will employ measures to prevent or control spills from fuels, lubricants or any other materials used in connection with construction and restrict them from entering the watercourse. Storage areas for chemicals, explosives, lubricants, equipment fuels, etc., as well as equipment refueling areas, must include containment measures (e.g., liner systems, dikes, etc.) to ensure that spillage of any material will not contact surface or ground waters. Storage areas and refueling areas shall be a minimum distance of 100 feet from any surface water body. All spills shall be promptly reported to the State Center for Pollution, Toxic Chemical and Oil Spills, 1-800-642-3074.
8. Upon completion of in-stream operations all disturbances below the ordinary high water mark will be properly stabilized within 24 hours to prevent soil erosion. Where possible, stabilization shall incorporate revegetation using bioengineering as an alternative to rip rap. If rip rap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created due to its placement. Fill is to be clean, nonhazardous and of such composition that it will not adversely affect the biological, chemical or physical properties of the receiving waters. Unsuitable materials include but are not limited to: copper chromium arsenate (CCA) and creosote treated lumber, car bodies, tires, large household appliances, construction debris, and asphalt. To reduce potential slope failure and/or erosion behind the material, fill containing concrete must be of such weight and size that promotes stability during expected high flows. Loose large slab placement of concrete sections from demolition projects greater than thirty-six inches in its longest dimension and tires are prohibited. Rebar or wire in concrete should not extend further than one (1) inch. All activities require the use of clean and coarse non erodible materials with 15% or less of like fines that is properly sized to withstand expected high flows.
9. Runoff from any storage areas or spills will not be allowed to enter storm sewers without acceptable removal of solids, oils and toxic compounds. Discharges from retention/detention ponds must comply with permit requirements of the National Pollutant Discharge Elimination System permit program of the West Virginia Department of Environmental Protection, Division of Water and Waste Management.
10. Land disturbances, which are one (1) acre or greater in total area, must comply with the National Pollutant Discharge Elimination System or other state stormwater permit requirements as established by the West Virginia Department of Environmental Protection, Division of Water and Waste Management, if applicable. Any land disturbances are required to use Best Management Practices for Sediment and Erosion Control, as described in the West Virginia Department of Environmental Protection's Erosion and Sediment Control Best Management Practice Manual, 2006, or similar documents prepared by the West Virginia Division of Highways. These handbooks are available from the respective agency offices.
11. Concrete will not be permitted to enter the watercourse unless contained by tightly sealed forms or cells. Concrete handling equipment shall not discharge waste washwater into wetlands or watercourses at any time without adequate wastewater treatment as approved by the West Virginia Department of Environmental Protection, Division of

Water and Waste Management.

12. In stream work in designated warm water streams and their adjacent tributaries during the fish spawning season, April - June and trout waters and their adjacent tributaries during the trout water fish spawning season September 15-March 31st requires a spawning season waiver from the WV DNR, Wildlife Resources Section. For information about specific stream designations contact DEP's Water Quality Standards Section at 304-926-0495. The Wildlife Resources Section, Trout Fisheries Program at 304-637-0245 or Warm Water fisheries Program 304-558-2771 should be contacted if a waiver is needed. In stream work may occur during the respective spawning season in ephemeral waters without a waiver if all reasonable measures are taken to minimize turbidity and sedimentation downstream associated with the proposed project.
13. Removal of well-established riparian vegetation not directly associated with the project construction is prohibited. Disturbance and removal of vegetation from project construction area is to be avoided, where possible, and minimized when necessary. Removal of vegetation shall not be allowed where stream bank stability under normal flow conditions would be compromised.
14. Operation of equipment instream is to be minimized and accomplished during low flow periods when practical. Ingress and egress for equipment shall be within the work site. Location of ingress and egress outside the immediate work area requires prior approval of the West Virginia Department of Environmental Protection, Division of Water and Waste Management in concurrence with the West Virginia Division of Natural Resources.
15. The permittee will comply with water quality standards as contained in the West Virginia Requirements Governing Water Quality Standards, Title 47 of Code of State Regulations, Series 2.
16. Stream activities permitted under the Nationwide Permit Program require that a West Virginia Public Lands Corporation Right of Entry be obtained. Application for this authorization should be made to the WV DNR, Office of Lands and Streams, Building 74, Room 200, 324 Fourth Avenue, South Charleston, West Virginia 25303, or by contacting them at 304-558-3225. Any activity within the 100-year floodplain requires approval from the appropriate Floodplain Manager.

The following website provides a statewide listing of Floodplain Managers in West Virginia: <http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Management.aspx> www.dhsem.wv.gov/mitigation/floodplain/Pages/default.aspx

17. If applicable, the permittee must measure and report Large Quantity Water use pursuant to §22-26-1et seq of the WV Code.
18. Pre-construction notification must be given to the DEP D W W M for use of any of the Nationwide Permits for **all** work in streams set forth in Sections A, B and C below.

- A. Tier 3 Protection-- West Virginia Code of State Regulations, Requirements Governing Water Quality Standards, Title 47, Series 2. **Outstanding National Resource Waters:** Outstanding National Resource Waters include, but are not limited to, all streams and rivers within the boundaries of Wilderness Areas designated by The Wilderness Act (16 U.S.C. §1131 et seq.) within the State, all Federally designated rivers under the “Wild and Scenic Rivers Act”, 16 U.S.C. §1271 et seq.; all streams and other bodies of water in state parks which are high quality waters or naturally reproducing trout streams; waters in national parks and forests which are high quality waters or naturally reproducing trout streams; waters designated under the “National Parks and Recreation Act of 1978”, as amended; and pursuant to subsection 7.1 of 60CSR5, those waters whose unique character, ecological or recreational value, or pristine nature constitutes a valuable national or state resource. The listing of Tier 3 streams is located at: http://www.dep.wv.gov/WWE/Programs/wqs/Documents/Tier%203%20Info/WVTier_3_Nov2013_web.xlt
 - B. All naturally reproducing trout streams. For information about specific streams contact WV Division of Natural Resources Wildlife Resource Section, Trout Fisheries Program at 304-637-0245;
 - C. 'West Virginia Natural Stream Preservation Act' - The following streams or rivers are protected from activities that would impound, divert or flood the body of water: Greenbrier River from its confluence with Knapps Creek to its confluence with the New River, Anthony Creek from its headwaters to its confluence with the Greenbrier River, Cranberry River from its headwaters to its confluence with the Gauley River, Birch River from Cora Brown Bridge in Nicholas County to the confluence of the river with the Elk River, and New River from its confluence with the Greenbrier River to its confluence with the Gauley River.
19. Wetland and Stream Mitigation guidelines – The discharge of fill material into a stream or wetland is authorized based upon the following criteria:
- A. One-tenth to ½ acre of wetland impact requires a Pre-Construction Notice (PCN) and plan for mitigation to be submitted to the Corps of Engineers along with the proposed plan for mitigation provided to the state for approval.
 - B. The amount of fill in a wetland, wetland complex or wetland system without mitigation is not to cumulatively exceed 1/10 acre.
 - C. “West Virginia Stream Wetland Valuation Metric” (SWVM) is the preferred method to assist with the determination of required mitigation. The metric is available at the Huntington and Pittsburgh Army Corps of Engineers web sites.

In all instances, mitigation for all impacts incurred through use of these Nationwide Permits must first be directed to elimination of the impacts, then minimization of the impacts and lastly through compensatory mitigation. In many cases, the environmentally preferable compensatory mitigation may be provided through approved mitigation banks or the West Virginia in-lieu fee program. Permittee responsible compensatory mitigation may be performed using the methods of: restoration, enhancement, establishment and in certain circumstances preservation. In general, the required compensatory mitigation should be located in the same watershed as the impact site, and located where it is most likely to successfully replace lost functions and services as the impacted site. However, the use of mitigation banks or in-lieu fee for in-kind replacement is not restricted to the major watershed in which the impact has occurred until such time as mitigation banks or in-lieu projects are developed in each major watershed.

When permittee responsible in-kind replacement mitigation is used it is to be accomplished at the following ratios until such time an approved functional assessment methodology is established for the state of West Virginia:

Impacts to open water wetlands are to be one (1) acre replaced for one (1) acre impacted.

Impacts to wet meadow/emergent wetlands are to be two (2) acres replaced for one (1) acre impacted.

Impacts to shrub-shrub and forested wetlands are to be three (3) acres replaced for one (1) acre impacted.

In instances where compensatory in-kind mitigation is completed 12 months prior to the impact of the resource, the replacement ratio may be reduced to as low as one (1) acre created/restored to every one (1) acre impacted.

NOTE: The ratio of created/restored wetlands to impacted wetlands not only ensure ~~insure~~ no net loss, but assure the adequate replacement of the impacted wetlands functions and values at the level existing prior to the impact. For many of the more complicated type wetlands, such as scrub-scrub and forested, the values and functions cannot readily be replaced through creation. Furthermore, not all wetland creation is successful.

In certain instances, the West Virginia Department of Environmental Protection, Division of Water and Waste Management may consider the acquisition of existing wetlands. Acquisition ratios are the following:

5 to 1 for open water wetlands;
10 to 1 for wet meadow/emergent wetlands and
15 to 1 for scrub-scrub and forested wetlands

Under extenuating circumstances the director may accept lower ratios for high quality wetlands under significant threat of development.

All wetlands acquired, using the acquisition method of mitigation, will either be deeded to the WV DNR Public Land Corporation for management by the Wildlife Resources Section or placed under a conservation easement and be protected from disturbance by the permittee or their designee. Third party oversight of the conservation easement by a non-profit conservation organization is preferred.

Streams. Compensatory mitigation projects for stream impacts should attempt to replace lost functions. Mitigation will be determined on a case-by-case basis based on the pre and post condition stream quality and complexity of the mitigation project preferably utilizing the SWVM worksheets. Compensatory mitigation may require protection through deed restrictions or conservation easements by the permittee or their designee.

20. Streams with Mussel populations.

- A. Should native freshwater mussels be encountered during the use of any Nationwide Permit, all activity is to cease immediately and the Division of Natural Resources Wildlife Resources Section, Wildlife Diversity Program is to be contacted (304-637-0245) to determine significance of the mussel population and the action to be taken.
- B. Work in streams known to have protected “no take” mussel populations or contain protected habitat of mussels on the Federal Endangered Species list must be approved by the WV DNR Wildlife Diversity Program. Applicants wishing to conduct projects in such streams should contact the program at (304) 637-0245. The most current list of these waters and other mussel information can be found here:
<http://www.wvdnr.gov/Mussels/Main.shtm>.
- C. Applicants should also give consideration to utilizing WVDNR’s Wildlife Data Base Inquiry process. This resource is designed for the applicant as an informative preplanning tool. It allows the applicant to know, in advance, if they will be encountering any federally listed endangered species (ES), state species of concern and high quality fish and wildlife habitats such as trout streams, warm water fisheries, wetlands, karst and cave habitats. This inquiry can be obtained from the: Wildlife Data Base Coordinator, PO Box 67, Elkins West Virginia 26241. Information on what to submit to receive an inquiry should be directed to data base coordinator at 304-637-0245.

21. Isolated State Waters.

In some cases, the Corps of Engineers may determine that an activity will not impact waters of the United States because the water is an isolated wetland or stream, and therefore does not require a 404 permit. However, under W. Va. Code §22-11-8(b)(3), a permit is needed to place a waste into any water of the State. Accordingly, any applicant proposing to impact an isolated water must contact DEP DWWM to obtain all necessary approvals for activities impacting any isolated State waters.